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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/892,959	06/27/2001	Kevin R. Keegan	DP-303212	3825

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EXAMINER

MAPLES, JOHN S

ART UNIT	PAPER NUMBER
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1745

DATE MAILED: 01/26/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/892,959

Applicant(s)

KEEGAN, KEVIN R.

Examiner

John S. Maples

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 06 October 2004 and 23 October 2003.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-8, 10-20 and 27 ~~is/are~~ are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-8, 10-20 and 27 ~~is/are~~ are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 06 October 2003 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on _____ is: a) ☐ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892) 4) ☐ Interview Summary (PTO-413) Paper No(s). _____
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948) 5) ☐ Notice of Informal Patent Application (PTO-152)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449) Paper No(s) _____ 6) ☐ Other: _____

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1. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

2. Claims 1, 8, 10-13, 18, 19 and 27 are rejected under 35 U.S.C. 102(e) as being anticipated by Butler-US 6,251,308. (Butler) (New rejection with regard to claim 27)

See Figure 1 of Butler along with column 2, lines 13-22 and column 7, lines 19-42. In Figure 1 of Butler, there are three areas in the plate 10 that depict the inlet and outlet segments. They are the segments on either side of the single baffles at the top of the three triangular formed figures near the bottom of the plate 10 as seen in Figure 1.

Applicant's arguments have all been considered but are not deemed persuasive.

Applicant states that Butler does not disclose a plurality of segments wherein each segment pair includes an inlet segment, and an adjacent outlet segment with a baffle disposed therebetween. As the examiner pointed out in the last office action and which is again repeated herein, Figure 1 of Butler shows in the portions of the plate at the top of the three triangular formed figures located near the bottom of the plate, three individual "baffles" are formed that extend from the bottom of the horizontal line located near the top third of the plate to the top of the said triangular figures. Such baffles have an inlet segment on the left side of the baffle and an outlet segment on the right side of the baffle, thus forming at least three segment pairs in the plate in Butler.

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With regard to applicant's further argument that Butler also does not disclose segment pairs wherein inlet segments are in fluid communication with an inlet, subsequent inlet segments, and adjacent outlet segments, and said outlet segments are in fluid communication with an outlet and subsequent outlet segments. In response to this argument, attention is again addressed to Figure 1 in Butler. In Butler, 18 is the inlet and 19 is the outlet. There are at least three segment pairs in Butler as outlined in the previous paragraph and these pairs meet the above recitations. The segment at the far left is the first segment pair, the segment in the middle is the second segment and the segment to the far right is the third segment. The second and third segments comprise the subsequent inlet and outlet segments and of course, each of these segments are in fluid communication with the first segment because the fluid flows completely throughout plate 10 in Butler. Thus Butler teaches the electrode fluid distributor as claimed.

3. Claims 1, 8, 10-12 and 27 are rejected under 35 U.S.C. 102(e) as being anticipated by Zeng-US 6,461,754. (Zeng) (New rejection with regard to claim 27)

Reference is made to Figures 1 and 2 of Zeng along with column 3, line 44 through column 4, line 29 which teach fluid segments in a fuel cell. In these portions of Zeng, three segment pairs are taught. As Figure 1 teaches specifically, there are three inlets, 111, 121 and 131 and three outlets, 112, 122 and 132, respectively. Thus the first pair is inlet/outlet 111/112, the second pair is inlet/outlet 121/122 and the third pair is inlet/outlet 131/132. As column 4, lines 16-29 of Zeng states, these segments are in fluid communication with one another. The baffles between the adjacent inlet and outlet of each segment pair are the walls separating the inlet from the outlet as seen in Figure 1.

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Again, applicant's arguments have all been considered but are not persuasive. Applicant argues that Zeng does not teach the segment pairs as claimed and the specific configuration the pairs have with one another and with an inlet and an outlet, which language has been specifically set forth in section 2 of this action and which will not be repeated here. However, as set forth in the previous paragraph here in Section 3, Zeng teaches three such segments pairs. Each segment pair comprises the claimed inlet and outlet. It is also noted that the claimed subsequent inlet and outlet segments are met by the second and third pair of segments.

Finally, each of the three pairs are in fluid communication with one another as column 4 of Zeng states. As a matter of fact, Zeng states that the pairs are in a series connection with regard to fluid communication between the segment pairs.

4. The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. See *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and, *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent is shown to be commonly owned with this application. See 37 CFR 1.130(b).

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

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5. Claims 1-8, 10-20 and 27 are rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 2-16, 18 and 25-29 of U.S. Patent No. 6,613,469. (New rejection with regard to claim 27) Although the conflicting claims are not identical, they are not patentably distinct from each other because the present application recites the baffle extending from the separator toward the first electrode, which limitation is not part of the 6,613,469 patent claimed subject matter. It would have been obvious to one of ordinary skill in this art to have extended the baffle in the 6,613,469 structure so that a higher efficiency of air flow would have been achieved in the distributor therein.

Applicant's arguments relating to the above obviousness-type double patenting rejection have been considered but are not deemed persuasive. Applicant argues that there are limitations in claims 2 and 5 of the 6,613,469 patent which are not taught by the prior art of record. This may be true, however, the subject matter in the 6,613,469 renders obvious the subject matter of the instant application. For example, claim 1 in the instant application is deemed obvious by the claims in 6,613,469.

Finally, applicant notes the application of the above patents of Butler and Zeng applied to the presently claimed subject matter.

6. Applicant's amendment necessitated the new grounds of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after

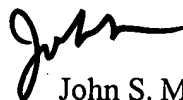
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the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

7. Any inquiry concerning this communication or earlier communications from the examiner should be directed to John S. Maples whose telephone number is 571-272-1287. The examiner can normally be reached on Monday-Thursday from 6:15-3:45.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Patrick Ryan can be reached on 571-272-1292. The fax phone numbers for the organization where this application or proceeding is assigned are 703-872-9310 for regular communications and 703-872-9311 for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 571-272-1700.



John S. Maples
Primary Examiner
Art Unit 1745

JSM
January 22, 2004